

Electronically Recorded

Tarrant County Texas

Official Public Records

8/4/2010 8:17 AM

D210187960

Multi-State  
Rev August 2009

PGS 7 \$40.00

## OIL &amp; GAS LEASE (Paid-Up)

This Oil & Gas Lease is made and entered into this 16th day of June, 2010, by and between **Bank of America, N.A.**, , P.O. Box 830308, Dallas, TX 75283 (Lessor), and **XTO Energy, Inc.**, 810 Houston Street, Ft. Worth, TX 76102 (Lessee),

1. **Grant and Description.** Lessor, in consideration of the cash bonus paid, of Lessee's agreement to pay royalties as herein provided, and of the other terms hereof, hereby leases and lets exclusively unto Lessee for the sole and only purpose of exploring, drilling, installing fixtures, and operating for and producing oil and gas from the Leasehold Estate, the following described land situated in Tarrant County, State of Texas:

See

Exhibit-"A"

deemed for purposes of this lease to contain .2516 acres. The rights and interests created by this lease in the above described lands are referred to as the "Leasehold Estate."

2. **Term of Lease.** Subject to the other provisions hereof, this lease shall be for a term of 3 years from this date (primary term) and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the Leasehold Estate, and the Lessor's royalties are paid as provided.

3. **Royalties.** Lessee shall pay royalties as follows:

(a) **Oil.** Lessee shall pay Lessor 25% (Oil Royalty Share) of the gross proceeds of all oil and other liquid hydrocarbons recovered, separated, produced or saved from or on the Leasehold Estate and sold by Lessee in an arms' length transaction; provided, however, if oil and/or other liquid hydrocarbons are not sold in an arms' length transaction, Lessor shall receive the Oil Royalty Share of the market value of such oil and/or other liquid hydrocarbons which shall be calculated by using the highest price, plus premium, if any, paid or offered for oil and/or other liquid hydrocarbons of comparable quality in the general area where produced and when run, the market value used in calculating the royalty hereunder to be adjusted upward, but never downward, if necessary to remove any reduction included in the prevailing market value due to charges for production and post-production expenses such as described in paragraph 3(e) below.

(b) **Gas.** Lessee shall pay Lessor 25% (Gas Royalty Share) of the gross proceeds received by Lessee for all gas (including substances contained in such gas) recovered, separated, produced or saved from or on the Leasehold Estate and sold by Lessee in an arms' length transaction; provided, however if gas is not sold under an arms' length transaction, Lessor shall receive the Gas Royalty Share of the market value of such gas (including substances contained in such gas) which shall be calculated by using the highest price paid or offered for gas of comparable quality in the general area where produced and when run, the market value used in calculating the royalty hereunder to be adjusted upward, but never downward, if necessary to remove any reduction included in the prevailing market value due to charges for production and post-production expenses such as described in paragraph 3(e) below.

(c) **Products.** Lessee's right to produce substances from the Leasehold Estate is limited to substances produced from oil and/or gas wells. Lessee shall pay Lessor royalty on all marketable substances produced by Lessee from the Leasehold Estate (all marketable substances which be produced from the Leasehold Estate or lands pooled therewith will be collectively referred to as "Products" and individually as a "Product"). The price used to calculate Lessor's royalty shall never be less than the price paid Lessee for any Product, and, if the manner of calculating royalty provided for herein would cause Lessor's royalty to be calculated based upon a lesser amount, the price actually paid Lessee shall be substituted as the basis for the royalty calculation. As to any Product which does not fall under the oil or gas royalty clauses above, Lessee shall pay Lessor 0% (Miscellaneous Royalty Share) of the gross proceeds received by Lessee for such Product in an arms' length transaction; provided, however, if the Product is not sold under an arms' length transaction, Lessor shall receive the Miscellaneous Royalty Share of the market value of such Product (including substances contained in such Product) which shall be calculated by using the highest price paid or offered for the most similar substances of comparable quality in the general area where produced and when run, the market value used in calculating the royalty hereunder to be adjusted upward, but never downward, if necessary to remove any reduction included in the prevailing market value due to charges for production and post-production expenses such as described in paragraph 3(e) below. If another owner of an interest in a well is selling any Product for a price higher than that received by Lessee, Lessor's royalty shall be calculated by using the highest price paid for the Product at the time of production from the well. To the greatest extent allowed by applicable law, Lessor shall have a lien on all Products and the proceeds from the sale thereof to secure payment of its royalties and all other sums due Lessor hereunder. The term "Royalty Share" may be used below to refer collectively to "Oil Royalty Share," "Gas Royalty Share," and "Miscellaneous Royalty Share."

(d) **Production Sale Contracts.** Lessee shall pay Lessor the applicable Royalty Share of all consideration received by or for the benefit of Lessee under any contract for the sale of Products, including, but not limited to, all contract settlements and other sums received by Lessee from any purchaser of Products, whether such sums are advance payments, payments under take-or-pay provisions, price buy-down settlements, or other contractual payments or payments in settlement of claims of whatever kind or character paid by any purchaser of Products to Lessee to the extent related to the sale of production from the Leasehold Estate. To the extent that any such consideration is paid in advance of actual production, Lessee shall receive credit for the amount thereof, up to but not exceeding the actual sales price of the Product, when such production occurs. In no event will the price paid Lessor for Lessor's share of the Products, or used to calculate a Royalty Share, be less than the price paid to Lessee for Lessee's share of Products produced hereunder. Lessee agrees that if it enters into any contract for sale of any Products which shall extend for three (3) years from the effective date of such sales contract and such contract does not have adequate provisions for redetermination of price at intervals of not less frequently than annually, then Lessee, its successors and assigns, shall in advance of executing any such sales contract provide Lessor with a full and complete copy of the proposed contract for the purpose of allowing Lessor to determine whether Lessee may sell Lessor's Royalty Share of Products under Lessee's proposed sales contract. Lessor shall, within thirty (30) days of receiving such sales contract, notify Lessee as to whether Lessee may sell Lessor's Royalty Share of Products under Lessee's proposed sales contract. If Lessor does not approve Lessee's proposed sales contract, then Lessor's royalty shall be calculated by using the highest price paid or offered for Products of comparable quality in the general area where produced and when run.

(e) **Royalty to be Free of Expenses.** Lessor's interest shall bear its proportionate share of severance taxes and other taxes assessed against its interest or its share of production, but Lessor's royalty shall not bear or be charged with, directly or indirectly, any cost or expense incurred by Lessee, including without limitation, for exploring, drilling, testing, completing, equipping, storing, separating, dehydrating, transporting, compressing, treating, gathering, or otherwise rendering marketable or marketing products, and no such

deduction or reduction shall be made from the royalties payable to Lessor hereunder, and any calculation of sales price or market value hereunder shall be increased to the extent necessary to remove all such costs and expenses as a charge against the Lessor's royalty.

**(f) Arms' Length Transaction.** In order to qualify as an arms' length transaction, a sale must be to a non-affiliated entity under an agreement negotiated in good faith by all parties which does not provide for any consideration to Lessee which will not or cannot be shared with Lessor under the royalty provisions of this lease. Without limiting the generality of the foregoing, if Lessee enters into any contract or arrangement for the sale of Products in which the buyer, or a third party acting under an agreement with the buyer, undertakes any activities relating to storing, separating, dehydrating, transporting, compressing, treating, gathering, or otherwise rendering marketable or marketing Products, or for incurring or paying any of the expenses described in paragraph 3(e), Lessee shall promptly inform Lessor of the exact nature of the arrangements made, including providing accurate and complete copies of the documents involved, and Lessor shall have the option of treating such sales of Products as having not been made in an arm's length transaction.

**(g) Litigation Recoveries.** If Lessee participates in any litigation or administrative proceeding against a third party for damage to the Leasehold Estate, the minerals therein, or improper or unauthorized removal of Products, including but not limited to, claims for trespass, violation of applicable rules and regulations, or breach of a production sale contract, Lessee shall make a sufficient claim therein to cover Lessor's Royalty Share as provided in this lease, and shall pay to Lessor the Royalty Share of the proceeds received by Lessee and attributable to this lease as a result thereof, whether by settlement, judgment or otherwise; provided, however, Lessee shall be entitled to recoup, from such royalty payments only, a proportionate share of the actual attorneys fees paid to outside counsel, expert witness fees, litigation expenses, and court costs paid by Lessee and attributable to issues related to this lease, this being strictly a right to recoup from royalties payable and imposing no personal liability on Lessor.

**(h) Shut-in Gas Royalty.** While there is a well on the Leasehold Estate capable of producing gas in paying quantities but the production thereof is shut-in or suspended for any reason, Lessee shall pay as royalty on or before 90 days after the date on which (i) production from any such well is shut-in or suspended or (ii) this lease is no longer maintained by compliance with other provisions hereof, whichever is the later date, and thereafter at annual intervals, a sum in the amount of \$25.00 per acre then held under this lease, or a minimum of \$500.00, whichever is greater, for each and every shut-in gas well; and if such payment is made or tendered in accordance with the terms hereof, this lease shall not terminate but shall continue in full force, subject to the other provisions hereof, and it will be considered that gas is being produced from the Leasehold Estate in paying quantities within the meaning of each pertinent provision of this lease, but in no event shall shut-in well payments maintain this lease in force for a cumulative period exceeding two (2) years. Lessee shall not be entitled to recover any shut-in royalty payments from the future sale of gas. Should the shut-in period extend beyond the expiration of the primary term, such shut-in provision will pertain only to the Production Unit of such gas well as provided below. Should such shut-in royalty payments not be made in a timely manner, it will be considered for all purposes that there is no production or no excuse for delayed production of gas from any such well or wells.

**(i) Recovery of Gas Liquids.** Lessee agrees that, if it is economic to do so, before any gas produced from the Leasehold Estate is used, moved or sold off the Leasehold Estate, it will be run, free of cost to Lessor, through a good quality oil and gas separator, or similarly efficient equipment, to recover liquid hydrocarbons.

**(j) Right to Take in Kind.** Lessor shall have the recurring option to take its Royalty Share of any Product in kind in lieu of cash payment, and to reverse such election and resume receiving royalty payment in money, in either case by giving Lessee at least sixty (60) days advance written notice. Such election may be made separately as to oil, gas or any other Product, and Lessor may elect to have the royalty production delivered at the wellhead, at the oil and gas separator, into a pipeline connected at the well, at the location where Lessee sells its production, or at another location if mutually acceptable to Lessor and Lessee. If Lessor elects to take royalty in kind, any necessary costs for separate metering or split stream delivery will be borne by Lessor. If Lessor elects to take gas royalty in kind, the parties shall enter into a gas balancing agreement using, at Lessor's election, either the most recent form used by Lessee in an arms-length industry transaction or the most recent form promulgated by the American Association of Professional Landmen. Lessee shall supply its most recent gas balancing agreement form to Lessor for evaluation purposes immediately upon receiving notice that Lessor intends to take gas royalty in kind. The inclusion of this option to permit Lessor to take its Royalty Share in kind shall not modify or limit Lessee's duty to pay royalties as provided herein or to market Products, except as to the Products actually taken in kind by Lessor.

**(k) Time for Payment of Royalty.** Within 120 days following the first sale of oil or gas produced from the leased premises, settlement shall be made by Lessee or by its agent for royalties due hereunder (initial royalty payment) with respect to such oil or gas sold off the leased premises, and such royalties shall be paid monthly thereafter without the necessity of Lessor executing a division or transfer order. If a division or transfer order is circulated by Lessee, such division order will be a simple statement of interest containing no warranty or indemnity clauses and containing no clauses modifying in any way the terms of this lease. The insertion of any such clause will be of no force and effect so far as this lease and the rights and obligations of the parties hereto, and in any event, Lessor shall be under no obligation to execute any division or transfer order, and Lessor's execution thereof, if done, shall be considered a mere accommodation. If the said initial royalty payment is not timely so made under the terms hereof, then unpaid royalty shall accrue interest at the rate of eighteen percent (18%) per annum. After the said initial royalty payment, with respect to oil or gas produced during any month, if royalty is not paid hereunder on or before the last day of the second succeeding month, then unpaid royalty shall accrue interest at the rate of eighteen percent (18%) per annum.

**(l) Royalty Information.** In addition to other information required to be furnished by Lessee to Lessor, either by law or under the terms of this lease, Lessee shall promptly provide Lessor with sufficient information for Lessor to monitor and calculate all royalty payments due Lessor hereunder, and if such information is not provided in a prompt or complete manner, Lessee waives, to the greatest extent allowable by law, any defense based upon the statute of limitations, laches or any other delay in bringing suit with respect to any matter which would reasonably have been revealed by such information, even if Lessor had access to relevant information from other sources, it being intended that Lessor may rely upon Lessee to keep Lessor fully informed without the necessity of obtaining information from other sources; provided, however, if an indefinite waiver is not allowable under applicable law, then the parties stipulate that any such suit must be brought within twenty (20) years from the date upon which it accrued or such shorter time period as may be the longest allowable by agreement of the parties under applicable law. It will be considered that information required hereunder has been promptly provided to Lessor if Lessee provides the same within thirty (30) days after the date upon which the information becomes available to Lessee.

**4. Delay Rentals. THIS IS A PAID-UP OIL & GAS LEASE; ALL DELAY RENTALS REFERRED TO HEREIN ARE PAID IN FULL.**

**5. Pooling.** Lessee is hereby granted the right to pool the Leasehold Estate with the estate created under one or more valid and subsisting oil and gas leases for the production of oil and/or gas, but such pooling must be accomplished in strict conformity to the terms of this lease. If Lessee exercises its pooling authority in strict conformity to the terms hereof, the unit formed thereby shall be valid, effective, and subject to the further terms hereof and shall be referred to as a "Pooled Unit." Lessee may pool more than once, and a Pooled Unit may be limited to certain depths or strata or one or more Products. Pooled Units shall conform to the size and other parameters for Production Units as provided below. Lessee shall file a written unit designation including a surveyor's plat of the Pooled Unit and a description of the included participating leasehold estates in the conveyance records of the county in which the Leasehold

Estate is located. A copy of the unit designation shall be furnished to Lessor within thirty (30) days after it is filed in the appropriate county records, and if Lessee fails to do so, such Pooled Unit may be declared invalid by Lessor by an instrument filed in such county records. Operations and production on any part of the Pooled Unit shall be treated (except the payment of royalties) as if on or from the Leasehold Estate. To compute the royalties due to Lessor on production from a Pooled Unit, there shall be allocated to the acreage from the Leasehold Estate which is included in the Pooled Unit that pro rata portion of the Products produced from the Pooled Unit which the number of surface acres from the Leasehold Estate included in the Pooled Unit bears to the total number of surface acres in the Pooled Unit, and such allocated production shall be treated for all purposes as production from the Leasehold Estate. A Pooled Unit which does not include 100% of the Leasehold Estate may only be formed with the written consent of Lessor, and operations on or production from such Pooled Unit will maintain this lease in force only as to the part of the Leasehold Estate included in the Pooled Unit. A Pooled Unit is strictly limited to the Leasehold Estate and will automatically terminate if this lease expires as to the part of the Leasehold Estate included in the Pooled Unit.

6. **Operations.** The following provisions shall apply to Lessee's operations on the Leasehold Estate, and for purposes of this lease, certain terms shall mean precisely as follows:

"Day" means calendar day.

"Commercial Well" shall mean a well producing oil and/or gas in paying quantities.

"Capable Drilling Rig" shall mean a drilling rig constructed and equipped so as to be able to drill to the total depth of a permitted Commercial Well in a reasonably expeditious manner. Expressly excluded from this meaning is a drilling rig used for preliminary operations such as setting surface casing, drilling a "rat hole," or similar near surface activities, but which is not used to drill the well to its total depth – for purposes of this lease such a rig is considered to be a non-capable rig, not a Capable Drilling Rig.

"Actual Drilling" shall be considered to have commenced on the day that the drill bit attached to a Capable Drilling Rig used for a permitted Commercial Well first penetrates the ground at its well bore's surface location. This meaning is intended to be different than that sometimes accorded lease provisions such as "commencement of a well," "commencement of operations," "drilling operations," "operations for drilling" and the like when such have been interpreted to include activities prior to the penetration of the ground by a Capable Drilling Rig; such preliminary activities, including but not limited to surveying, staking, dirt moving, road building, site preparation, rig assembly and preliminary shallow drilling with a non-capable rig, expressly do not constitute Actual Drilling for purposes of this lease.

"Completion" shall mean the earlier of (i) the day on which the Capable Drilling Rig which drilled the well was released by Lessee or (ii) the day upon which a ninety (90) day period has elapsed without the well having been deepened by at least one thousand feet, or in the case of a Horizontal Well laterally extended by at least one thousand feet.

"Horizontal Well" shall mean any well in which the horizontal component of the gross completion interval in the reservoir exceeds one hundred feet.

"Vertical Well" means a well that is not a Horizontal Well.

"Commission" shall mean the state or federal governmental authority with jurisdiction over well spacing, density, and unit size and shape applicable to units for producing wells for the field in which the well in question is located.

"Regulatory Unit" shall mean a unit of the standard size and shape as designated by the Commission.

"Production Unit" shall mean the surface area and underlying depths of the Leasehold Estate as to which this lease may be maintained after the primary term by a Commercial Well.

"Continuous Program Well" means a well on which Lessee commences the Actual Drilling during the 180 day period immediately prior to the expiration of the primary term, and shall include each well thereafter drilled by Lessee on the Leasehold Estate with no more than one hundred and eighty (180) consecutive days elapsing between the Completion of one Continuous Program Well and the commencement of the Actual Drilling of the next Continuous Program Well.

"Continuous Drilling Program" means the period of time beginning with the timely commencement by lessee of Actual Drilling of the first Continuous Program Well by Lessee and ending on the day upon which more than one hundred and eighty (180) consecutive days have elapsed since the Completion of the most recent Continuous Program Well without the commencement by lessee of Actual Drilling on a further Continuous Program Well.

"Reworking" shall mean the actual presence of a rig and workers on the Leasehold Estate and the rig's active, continuous use in an attempt to repair a well which has had a serious mechanical failure or to restore production from a well which has stopped producing in paying quantities.

**(a) Dry Holes and Cessation of Production During the Primary Term.** If, during the primary term but prior to discovery of oil or gas on the Leasehold Estate or land pooled therewith, Lessee should drill and abandon a dry hole or holes thereon, or if, after discovery of oil or gas, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences or resumes the payment or tender of rentals, if applicable, or commences actual drilling or reworking on or before the rental paying date next ensuing after the expiration of sixty (60) days from date of completion and abandonment of said dry hole or holes or the cessation of production. This provision shall have no application after the expiration of the primary term.

**(b) Development and Protection from Drainage.** Lessee shall act as a reasonably prudent operator in developing and further exploring the Leasehold Estate. Lessee shall also act as a reasonably prudent operator in protecting the Leasehold Estate from drainage by wells located off of the Leasehold Estate, and, without limiting the generality of Lessee's obligations of development, further exploration and protection from drainage, in the express situation in which a Commercial Well is completed on lands in which Lessor owns no interest or only a partial interest in the minerals or royalty, and which has any part of its borehole within 1,000 feet of the Leasehold Estate (offsetting well), then within one hundred and eighty (180) days after the commencement of production from such offsetting well, Lessee shall either (a) commence the Actual Drilling of a similar well at a location on the Leasehold Estate as near as practical to such offsetting well and thereafter diligently drill and complete the same, or (b) release this lease as to a tract of land as nearly contiguous to the location of the offsetting well as practicable and of a size which would constitute a Production Unit for a similar well drilled by Lessee on the Leasehold Estate, or (c) Lessee may maintain the lease as to the acreage otherwise required to be released for a maximum of two (2) more successive years by Lessee paying compensatory royalty at the rate provided in this lease for oil, gas and other Products as though the production from the offset well was production from a well located on an unpooled Production Unit on the Leasehold Estate. The compensatory royalty is to be paid monthly subject to the same terms and conditions as the royalty on actual production from the Leasehold Estate; provided that the due date for each royalty payment shall be extended by sixty (60) days from the due date for royalty payments on production from the Leasehold Estate in order to give Lessee sufficient time in which to acquire production information from the offsetting well. If this lease is maintained in force by payment of compensatory royalties, after

two (2) years of such payments Lessee shall have the same obligation to release acreage as provided in item (b) above unless Lessee is then maintaining the acreage required to be released under some other provision hereof. Lessee shall have an absolute obligation to protect the Leasehold Estate from drainage by wells located off of the Leasehold Estate which Lessee operates or in which Lessee has any ownership or contractual interest.

**(c) Expiration of Primary Term.** At the expiration of the primary term, this lease shall automatically terminate as to all lands and depths of the Leasehold Estate not then included in the Production Unit assigned by Lessee to a Commercial Well. Prior to the expiration of the primary term, or prior to the date upon which a Continuous Drilling Program ends if applicable, if there is then one or more Commercial Wells on the Leasehold Estate, Lessee shall file for record in the county where each such well is located a written designation of a Production Unit for each Commercial Well exactly corresponding to a permissible Regulatory Unit as established by the Commission for the field and area in which each such well is located. A Production Unit shall not exceed the standard size, shape and/or diagonal established by the Commission for an applicable Regulatory Unit and shall not contain more acreage than the minimum necessary for the well to comply with applicable regulations. If the Commission has not established specific rules for Regulatory Units for the well in question, Lessee's designation of the Production Unit shall be in as nearly as practicable the shape of a square with the well in its center for a Vertical Well, or of a rectangle with the well bore along its centerline for a Horizontal Well. In each such case, if such unit is designated in strict conformity to the requirements of this paragraph, it shall become the well's Production Unit for purposes of this lease. In the absence of specific unit size rules promulgated by the Commission, for Vertical Wells a Production Unit shall not exceed 40 acres for an oil well completed at any depth; 80 acres for a gas well completed at a depth of less than 2,000 feet subsurface; 160 acres for a gas well completed at a depth of 2,000 feet subsurface to 6,000 feet subsurface; 320 acres for a gas well completed at a depth of 6,000 feet subsurface to 9,000 feet subsurface; 640 acres for a gas well completed at a depth greater than 9,000 feet subsurface. A well completed at exactly one of the depths specified above shall be deemed to have been completed above that depth. For a Horizontal Well, the Production Unit shall not exceed a size which allows Lessee to retain the minimum regulatory spacing distance between the wellbore and the boundaries of the Production Unit, or 640 acres if no such determination can be made due to lack of applicable spacing rules. In all cases, if the well's allowable rate of production is based upon acreage assigned to its unit, the well's Production Unit may be of any size up to the size which obtains the maximum allowable. Each Production Unit shall include all depths from the surface to the stratigraphic equivalent of the base of the deepest then producing formation penetrated by the wellbore of a Commercial Well on the Production Unit, but no depths below that level. Each Production Unit shall be considered for all purposes to be a separate lease, and production of oil or gas, drilling or reworking operations, or the payment of shut-in gas royalty on one Production Unit shall not maintain this lease in force as to any other Production Unit, lands or depths. As to each Production Unit maintained by Lessee, if production should cease from any well on such Production Unit, this lease will not terminate as to such Production Unit so long as Lessee commences Actual Drilling of a new well or reworking of an existing well on or before the expiration of sixty (60) days from date of the cessation of production and proceeds with such drilling or reworking operations with no cessation of more than sixty (60) consecutive days until commercial production of oil and/or gas is restored.

**(d) Continuous Drilling Program.** If Lessee wishes to temporarily suspend automatic termination of this lease at the expiration of the primary term, Lessee may, within the one hundred and eighty (180) day period immediately prior to the expiration of the primary term, commence the drilling of a Continuous Program Well, and Lessee may thereafter conduct a Continuous Drilling Program on the Leasehold Estate with no more than one hundred and eighty (180) consecutive days elapsing between the Completion of one Continuous Program Well and the commencement of the Actual Drilling of the next Continuous Program Well. This lease will remain in force as to all the lands and depths covered hereby so long as such Continuous Drilling Program is conducted by Lessee. Upon the cessation of the Continuous Drilling Program, which shall be deemed to have ceased any time that more than one hundred eighty (180) days elapse after the Completion of a Continuous Program Well without the commencement of Actual Drilling of another Continuous Program Well by Lessee, this lease shall terminate as to all lands and depths covered hereby which are not then included in the Production Unit of a Commercial Well, and Lessee shall otherwise have the same obligations regarding designation of Production Units, execution of releases, and other matters as are herein elsewhere provided to occur upon the end of the primary term.

**(e) Review of Production Units.** At any time after the fifteenth anniversary date of this lease, Lessor may request that Lessee review any one or more Production Units to determine if there is more acreage in such Production Unit than is necessary to support the Commercial Well or wells then producing therefrom, and if the Production Unit size can be reduced without causing the well to be no longer located in accordance with established governmental spacing requirements, Lessee shall re-designate the Production Unit to so reduce it (re-designated Production Unit) and shall release this lease as to all acreage no longer included in the re-designated Production Unit. Likewise, at any time after the fifteenth anniversary of this lease, Lessor may request that Lessee release all depths in any Production Unit which are more than 100 feet below the stratigraphic equivalent of the base of the deepest then producing formation penetrated by the wellbore of a Commercial Well on the Production Unit (non-producing deep rights), and Lessee shall promptly comply with such request. Lessor's rights to request re-designated Production Units and releases of non-producing deep rights shall be recurring and may be exercised as often as Lessor considers advisable.

**(f) Compliance with Regulations and Indemnity.** Lessee shall conduct its operations in compliance with all applicable laws, rules and regulations. Lessee will protect, indemnify, hold harmless and defend Lessor against any claim, demand, cost, liability, loss or damage suffered by Lessor, including reasonable attorneys fees, expert witness fees, litigation expenses and court costs, arising out of or associated in any way with (i) any activity conducted by Lessee or Lessee's employees, agents, servants, contractors, licensees or permittees on or near the Leasehold Estate; (ii) environmental remediation and plugging and abandonment of wells; (iii) the management, use and disposal of produced water and wastes or substances associated with activities on the Leasehold Estate; and/or (iv) the oil, gas, all other products, any waste material, or any substance, pollutant or contaminant produced by Lessee or brought by Lessee onto the Leasehold Estate (all of which potential sources of claims shall be referred to as "Lessee's Conduct"). LESSEE'S OBLIGATION TO INDEMNIFY LESSOR FOR CLAIMS ARISING FROM LESSEE'S CONDUCT SHALL APPLY WITHOUT REGARD TO FAULT ON THE PART OF EITHER LESSOR OR LESSEE AND SHALL SPECIFICALLY INCLUDE INDEMNIFICATION OF LESSOR AGAINST LIABILITY TO THIRD PERSONS ARISING FROM LESSOR'S NEGLIGENCE IF SUCH LIABILITY IS RELATED TO LESSEE'S CONDUCT. Lessee's indemnity obligations for Lessee's Conduct under this paragraph are continuing obligations which will continue in effect, and be enforceable by Lessor, even after this lease terminates. As used in this paragraph, "Lessor" includes Lessor and Bank of America, N.A. and its respective directors, officers, employees, and agents. If any portion of this indemnity provision shall ever be held to be invalid or unenforceable, it shall be deemed stricken herefrom and the remainder of this provision shall continue to apply to the greatest extent permitted by applicable law.

**(g) Surface Use Plans.** Lessee does not by virtue of this lease acquire any rights whatsoever to conduct any operations on the surface of the leased premises, however, Lessee may recover oil, gas and associated hydrocarbons from the lease premises by directional or horizontal drilling, pooling, unitization or any other method provided in this lease.

**7. Assignments.** No assignment of this lease, or interest therein, may be made without written approval of the Lessor, and such approval shall not be unreasonably withheld. Subject to the preceding condition, the provisions of this lease shall extend to the heirs, executors, administrators, successors and assigns of Lessor and Lessee, but no change or division in ownership of the Leasehold Estate, rentals, or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. No such change or division in the ownership of the Leasehold Estate, rentals or royalties shall be binding upon Lessee for any purpose until Lessee shall have been furnished with the instrument or instruments, or accurate copies thereof, evidencing such change or division. In the event of a permitted assignment of this lease as to a segregated portion of the Leasehold Estate, the rentals payable hereunder shall be apportioned as between the several leasehold owners ratably according to the surface area owned by each, and default in rental

payment by one shall not affect the rights of other leasehold owners hereunder, and liability for breach of any obligation hereunder shall rest exclusively upon the owner of this lease or a portion thereof who commits such breach.

8. **Force Majeure.** Lessee shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to force majeure, except as to any and all monetary payments due under the terms of this lease. The term "force majeure" as employed herein shall mean: (i) any act of God including but not limited to storms, floods, washouts, landslides and lightning, and (ii) any order or direction by any federal, state or municipal law, executive order, rule or regulation enacted or promulgated under color of authority to cease drilling operations, reworking operations or producing operations on the Leasehold Estate. At such time as force majeure is terminated and for a period of sixty (60) days after such termination, each and every provision of this lease or implied covenant arising hereunder that might operate to terminate it or the estate conveyed by it shall be suspended and inoperative and this lease shall continue in full force, provided, however, that in no event will the primary term be extended unless Lessee has begun the actual drilling of a well prior to the date of the expiration of the primary term.

9. **Lesser Interest.** If Lessor owns an interest in the Leasehold Estate less than the entire and undivided fee simple estate therein, then the royalties and rental herein provided shall be paid to Lessor in the proportion which Lessor's interest bears to the entire and undivided fee simple estate therein.

10. **No Warranty.** Lessor executes and delivers this lease without warranty of title either express or implied. Lessee, at its option, 30 days after giving written notice to Lessor, may discharge any tax lien upon the interest herein leased; and, in the event Lessee does so, Lessee shall have the right to apply rentals and royalties accruing hereunder to reimburse such payment. Lessee shall not be subrogated to the rights of the party to whom payment is made, but may reimburse itself out of any royalties otherwise payable to Lessor hereunder.

11. **Mandatory Releases by Lessee.** At any time that this lease terminates as to any acreage or depth, Lessee shall promptly execute a release thereof in recordable form which contains a legally adequate description of the lands and/or depths being released. The release will be recorded in the appropriate county records and subsequently delivered to Lessor.

12. **Information to be Provided by Lessee.** Lessee shall advise Lessor in writing as to the location of each well drilled upon the Leasehold Estate, or on lands pooled therewith, on or before seven (7) days after commencement of operations, and shall advise Lessor in writing as to the date of completion or abandonment of each well drilled within thirty (30) days after such completion or abandonment. Lessee agrees to furnish Lessor with all well drilling, completion and production data, reports, title opinions, logs, and information when specifically requested by Lessor. Lessee agrees that immediately following this instrument being recorded in the county records where the Leasehold Estate is located that Lessee will provide Lessor with a copy of this fully recorded instrument as it appears in said records.

13. **Enforcement Expenses.** If Lessor files a legal action to enforce any express or implied obligation under the terms of this lease and receives a favorable judgment from a court of competent jurisdiction, then Lessee shall reimburse Lessor for all costs of such legal proceeding including reasonable attorney's fees, expert witness fees, litigation expenses and court costs.

14. **No Community Lease.** If the mineral and/or royalty interests covered by this lease are different as between any two or more tracts within the Leasehold Estate, the execution of this lease shall not be construed to create a community lease nor in any way to effect the pooling or cross conveyance of interests in any such two or more tracts. Instead, it is Lessor's intent that oil and gas royalties and other lease benefits shall accrue to the owners of the particular tract of land on which is located the well or wells from which oil or gas production is taken, without apportionment to the owners of any other tract or tracts covered hereby, unless the pooling authority granted to Lessee under this lease has been exercised, it being intended that ownership of royalties shall accrue to the tract on which the well is located.

15. **Parties in Interest.** Lessee represents that he/she is not an officer, director, or employee of Bank of America Corporation, Bank of America, N.A., or any of its affiliates and/or subsidiaries, nor is Lessee acting on behalf of any such officer, director, or employee.

16. **Notices.** All notices and other communications given in connection with this lease shall be in writing and shall be deemed to have been properly given and received on the date when personally delivered, or shall be deemed to have been properly given on the date of actual receipt if delivered by certified mail, fax or courier. The following addresses are hereby designated for the receipt of notices:

LESSOR: Bank of America, Attn: Corporate Minerals, P.O.Box 830308, Dallas, TX 75283

LESSEE: XTO Energy Inc. 810 Houston St. Ft. Worth, TX 76102

17. **Implied Covenants Preserved.** The express covenants of the lease are not intended to limit or restrict any implied covenants existing by law or by the nature of this agreement.

Executed on the date first above written.

Lessor:

Bank of America, N.A.,

By: 

Name: Dickerman C. Sadler  
Title: Senior Vice President  
Lease #: \_\_\_\_\_  
Address: P.O. Box 830308  
Dallas, TX 75283-0308

Lessee: 

XTO ENERGY INC.

By: 

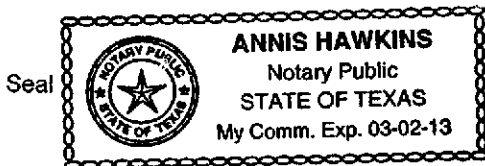
Name: Edwin S. Ryan, Jr.  
Title: Sr. Vice President- Land Administration

State of Texas

County of Dallas

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Dickerman C. Sadler, Senior Vice President of Bank of America, N.A., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Bank in the capacity therein stated.

Given under my hand and seal of office this the 19<sup>th</sup> day of July, 2010.



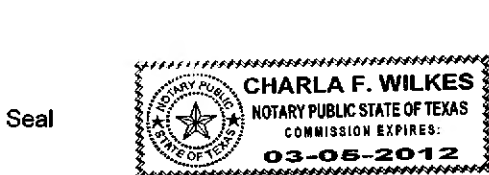
Annis Hawkins  
Notary Public in and for the State of Texas

State of Texas

County of Tarrant

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Edwin S. Ryan, Jr., Sr. Vice President – Land Administration, an Officer of XTO ENERGY, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Corporation in the capacity therein stated.

Given under my hand and seal of office this the 23<sup>rd</sup> day of June, 2010.



Charla F. Wilkes  
Notary Public in and for the State of Texas

## EXHIBIT "A"

This Exhibit "A" is attached to and made a part of that certain Oil and Gas Lease dated the June 16, 2010 by and between Bank of America, N.A., as Lessor and XTO Energy Inc., as Lessee.

### Land Description:

Being 0.2516 acres of land, more or less, and being part of Marine Heights Addition, Blk. 2A, Lot 28, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the revised Plat thereof recorded in Volume 388-116, Page 42 Plat Records of Tarrant County, Texas.

The 2010 Tarrant County Appraisal District Geo-Reference Number for the above described property is 24820-2A-28.

Lessor:

Bank of America, N.A.,

By: 

Name: Dickerman C. Sadler

Title: Senior Vice President

Lease #: \_\_\_\_\_

Address: P.O. Box 830308  
Dallas, TX 75283-0308

Lessee:

XTO ENERGY INC.

By:  *Ed*

Name: Edwin S. Ryan, Jr.

Title: Sr. Vice President- Land Administration